

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE PLUMBERS AND
PIPEFITTERS NATIONAL PENSION FUND,
TRUSTEES FO THE INTERNATIONAL TRAINING
FUND, TRUSTEES OF THE PLUMBERS LOCAL
NO. 1 WELFARE FUND, ADDITIONAL SECURITY
BENEFIT FUND, 401(K) FUND, HOLDIAY AND
VACATION FUND and TRADE EDUCATION
FUND,

Plaintiffs,

ORDER
04 CV 1706 (ILG)

-against-

A.P.I. PLUMING, INC, CHRISTOPHER
CHIERCHIO, DOMENICK GOFFREDO and DAVID
AGINSKY,

Defendants.

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GLASSER, United States Senior District Judge:

On June 2, 2004, various benefit funds affiliated with the United Association Local Union No. 1 filed a complaint naming defendant Christopher Chierchio and others seeking to recover monies that Chierchio's company, A.P.I. Plumbing, Inc., was contractually obligated to pay pursuant to a collective bargaining agreement with the union. Default judgment was entered against Chierchio and A.P.I. Plumbing on March 13, 2006. On May 18, 2009, Chierchio moved the Court to vacate the default judgment.

At oral argument on July 22, 2009, counsel for the plaintiffs characterized Chierchio's motion as baseless and replete with fabrications and requested that the attorneys' fees and costs incurred to oppose the motion be awarded by the Court. (Oral Argument Transcript dated July 22, 2009, ("Tr.") 11.) Counsel for the plaintiffs also requested an award of attorneys' fees and costs

for the plaintiffs' efforts since March 2006 to collect the default judgment. (Tr. 11.) The Court denied Chierchio's motion as untimely, meritless and frivolous. (Tr. 13-14.) The Court also held that the requested attorneys' fees were appropriate under the Employee Retirement Income Security Act ('ERISA') and 28 U.S.C. § 1927. (Tr. 15.)

On August 27, 2009, the plaintiffs submitted a Motion for Attorneys' Fees and Non-Taxable Expenses. The plaintiffs' motion includes time sheets and other appropriate exhibits itemizing attorneys' fees and reasonable costs incurred in connection with collection of the default judgment and defending the motion to vacate.

Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D), provides that the court shall award reasonable fees and costs to benefit plan fiduciaries where judgment in favor of the plan has been awarded. Here, the plaintiffs have requested \$15,941.99 in attorneys' fees and \$1292.20 in costs in connection with enforcement of the default judgment. Title 27 U.S.C. § 1927 provides that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." Here, the plaintiffs have requested \$9,850 in attorneys' fees and \$753.11 in costs in connection with their opposition to the motion to vacate.

Having reviewed the plaintiffs' submissions, the Court finds the fees and costs detailed therein to be reasonable. Therefore, the Court orders the entry of a judgment in favor of the plaintiffs against Mr. Cheirchio, pursuant to 29 U.S.C. § 1132(g)(2)(D), for \$15,941.99 in attorneys' fees and \$1292.20 in costs for a total of \$17,234.19. The Court orders the entry of judgment in favor of the plaintiffs against Mr. Anthony Vittorioso, Mr. Cheirchio's attorney,

pursuant to 27 U.S.C. § 1927, for \$9,850 in attorneys' fees and \$753.11 in costs for a total of \$10,603.11.

SO ORDERED.

Dated: Brooklyn, New York
September 2, 2009

/s/

I. Leo Glasser
United States Senior District Judge

Copies of the foregoing memorandum and order were electronically sent to:

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